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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,803	05/22/2001	Bernhard Kern	1625	1185

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STRIKER, STRIKER & STENBY  
103 East Neck Road  
Huntington, NY 11743

EXAMINER

LIN, KUANG Y

ART UNIT PAPER NUMBER

1725

DATE MAILED: 05/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/862,803

Applicant(s)

KERN, BERNHARD

Examiner

Kuang Y. Lin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. The amendment, filed on August 1, 2003, to page 9, lines 5-20 of the specification is again objected to in that the reference numeral for the heating means shall be "2" rather than "20". Also, in the amendment to page 10, lines 1-10 of the specification, it is not clear what "bubble storage" is.

2. Claims 1-7 are again rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, it is not clear what the claimed process step of "without interruption of individual casting process" is referred to and also there is a lack of antecedent basis in the specification for the claimed feature; lines 14-15, what "losses of a quantity of the supplied liquid metal in said casting retort" are referred to? In claims 2 and 3, it is not clear how the additional solid light metal is supplied and where the antecedent basis in the specification for the claimed feature is. In claim 5, what tool device is referred to? Also, it is not clear how the metal can be solidified by simply moving the tool device away; In claim 7, what tool device is referred to? Also, there is a lack of antecedent basis in the specification for the claimed feature.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-7 insofar as definite are rejected under 35 U.S.C. 103(a) as being unpatentable over DE-44 31 865 in view of Callihan et al. and further in view of either Jorn et al, Blum et al, Muller or JP 63-268,559.

DE '865 substantially shows the invention as claimed except that it does not show to provide a multiple quantity of molten metal required for each casting in the casting retort and heating means at the lower end of the molten metal dosing chamber. However, Callihan et al. show that it is conventional to provide a multiple quantity of molten metal in the casting retort for casting a plurality of castings. It would have been obvious to provide the casting retort of DE '865 with the multiple quantity of molten metal required for each casting when a plurality of casting are to be continuously cast. Further, each of the tertiary references shows to provide heating means at the lower end of the molten metal dosing chamber such that to ensure free flow of the molten metal from the dosing chamber into the casting mold. It would have been obvious to provide the heating means of the tertiary references in the casting retort of DE '865 such that to facilitate the molten metal dispensing process.

5. Applicant's arguments filed Jan. 6, 2005 have been fully considered but they are not persuasive.

a. In page 5 of the remarks applicant stated that the term "bubble storage" is known in the art. However, he failed to provide any evidence to support his statement. He further stated that the term is not defined in any of the claims and therefore further clarification is not required. However, the specification shall contain a written description of the invention and of the manner in such full, clear,

concise and exact terms as to enable any person skilled in the art to which it pertains or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention. See 35 USC 112, 1<sup>st</sup> paragraph.

b. In page 6, last paragraph of the remarks applicant stated that the instant process is an uninterrupted course of casting process. However, it is noted that DE '865 also performs an uninterrupted process. Applicant further stated that the instant process provide a multiple of the required metal quantity for each casting. However, Callihan et al. show that feature to be conventional.

c. In page 7, 2<sup>nd</sup> paragraph of the remarks applicant referred to DE 221 2652. However, that reference is not of record. Applicant further stated that the negative pressure is required for this process of dosing the molten metal. However, the scope of claim does not include that limitation.

d. In page 8 of the remarks, applicant broadly stated that all the tertiary references do not disclose the claimed manufacturing process. However, all the tertiary reference are cited to show that it is conventional to provide a heated conical nozzle for dispensing molten metal such that to maintain the molten metal in a designated temperature when it leaves the nozzle. It would have been obvious to provide the heating means of the tertiary references in the casting retort of DE '865 in view of the advantage. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations

of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kuang Y. Lin whose telephone number is 571-272-1179. The examiner can normally be reached on Monday-Friday, 10:00-6:30,.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas X Dunn can be reached on 571-272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kuang Y. Lin  
Primary Examiner  
Art Unit 1725

4-27-05